

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1996 SESSION

FILED
January 31, 1997
Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

SHANE WARREN WILSON,

Appellant.

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C.C.A. NO. 01C01-9601-CC-00040

WARREN COUNTY

HON. CHARLES D. HASTON,
JUDGE

(Driving without a license; violating
registration law)

FOR THE APPELLANT:

FOR THE APPELLEE:

SHANE WARREN WILSON, pro se
2045 Freeze Rd.
Morrison, TN 37357

CHARLES W. BURSON
Attorney General & Reporter

EUGENE J. HONEA
Asst. Attorney General
450 James Robertson Pkwy.
Nashville, TN 37243-0493

WILLIAM M. LOCKE
District Attorney General

TOM MINER
Asst. District Attorney General
Court Square
McMinnville, TN 37110

OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The defendant was indicted for driving without a license and violating the vehicle registration law. A jury convicted him of these offenses. After a hearing, he was sentenced to thirty days in county jail on each offense, to be served concurrently, and fined a total of one hundred dollars (\$100). In this direct appeal, the defendant complains that he was denied the right to counsel because his appointed counsel refused to cooperate in his defense. After a review of the record, we affirm the judgment below.

The record reflects that the defendant stated at his arraignment that he wished to represent himself. Nevertheless, the trial court appointed a public defender “to consult with the Defendant.” At the beginning of the trial of this matter, the defendant again stated that he desired to represent himself. The trial court determined that he could do so, but reminded him of the public defender’s appointment and urged him to accept that assistance. The record does not reveal whether or on what matters the defendant consulted with the public defender, but does reveal that defense counsel did not participate in the trial on the record. Rather, the defendant actively represented himself, making objections, cross-examining witnesses, testifying on his own behalf, and making a closing argument.

Criminal defendants have the right to represent themselves at their own trials. Faretta v. California, 422 U.S. 806, 819 (1975). The defendant was granted this right. He is not now complaining that his waiver of his right to counsel was ineffective. Rather, he complains that he “was denied his Right to counsel preserved in Article I, Section 9 of the Constitution of the State of Tennessee . . . in that counsel appointed by the trial court to aid Appellant in his defense . . . took a position that appeared to be in

complete agreement with the State's position . . . [causing] more hindrance than aid. . . and, being unlearned in law and due process, your Appellant was in effect denied his Right to due process."

It is clear from the record below that the defendant was not "denied counsel." This allegation is wholly without merit. Rather, he was permitted, at his request, to represent himself. He was also appointed counsel. Thus, he had the "best of both worlds." However, now that he has been convicted, the defendant is complaining that his "elbow counsel" did not advocate properly on his behalf.

In the trial of this matter, the defendant admitted that he did not have a valid driver's license at the time he was pulled over while driving his car. He also admitted that he did not have the car registered. He further admitted that he was aware of the laws requiring that he register his car and have a valid driver's license. His defense was that he was not required to obey these laws because he was "traveling" and not "driving." He further made references in his closing argument to his constitutional right to "travel" on the public right-of-way.

Apparently, the defendant is convinced that he has a constitutional right to drive his car upon public highways without any regulation by the government. The defendant is wrong and his elbow counsel cannot be faulted for refusing to argue this position.¹

The defendant's contentions being without merit, the judgment below is

¹If, in fact, he did so refuse. Because this proceeding is a direct appeal, no hearing was had below in order to determine precisely what role the public defender actually played in the defendant's defense. Accordingly, there is no evidence in the record establishing that his representation was ineffective, if that is what the defendant is attempting to argue.

affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID H. WELLES, Judge

JERRY L. SMITH, Judge